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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 175

PETSONELLA MORAGNE, as personal representative of the Estate of EDWARD MORAGNE, SR., deceased, and PETSONELLA MORAGNE, individually,

Petitioner,

vs.

STATE MARINE LINES, INC., a corporation,

Respondent,

vs.

GULF FLORIDA TERMINAL COMPANY, a corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION AND BRIEF ON BEHALF OF NATHAN BAKER, ESQ., AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

NATHAN BAKER, *Pro Se,*
1 Newark Street,
Hoboken, New Jersey, 07030.

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To the Honorable Chief Justice and Associate Justices of The Supreme Court of The United States of America:

I, the undersigned, hereby request permission to file a brief *amicus curiae* in the above matter. I have been

heavily involved in the cases which have shaped much of the law which exists today. *The M/V "Tungus"* v. *Skovgaard,* 358 U. S. 588, 79 S. Ct. 503 (1959); *United N.Y. & N.J. Sandy Hook Pilots Ass'n* v. *Halecki,* 358 U.S. 613, 79 S.Ct. 517 (1959). In addition I have handled, am handling, and will handle many cases which will be affected by the form taken by maritime law after this court's decision in this case. I believe that the brief arguments which I present based upon my research and analysis of the law and my experience in this field will assist the court.

For the foregoing reasons it is respectfully prayed that this Honorable Court accept this brief *Amicus Curiae.*

NATHAN BAKER, ESQ.
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BRIEF OF *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

Questions Presented

Whether or not the duties imposed by maritime law for the protection of those who may be injured on navigable

waters should in all cases provide the basis for recovery even where maritime law "adopts" a state wrongful death act to determine who may take and what measure of damages is to be applied?

The maritime law defines the duties owed by shipowners and others and these duties should not be negated or modified by state wrongful death acts.

The decision of this court in *The Harrisburg,* 119 U.S. 119, 7 S.Ct. 140 (1886) held that there was no right in maritime law to recover damages for the death of a human being and that when admiralty "adopts" a state statute to provide for this right it takes also "the limitations" which are part of the statute. This court is well aware of the disparities which have followed from this decision. Presumably, the duties of a shipowner remain the same, regardless of whether the human being involved is merely maimed or is killed. However the remedy will depend, in the case of death, on where the accident occurred and vagarities of local laws. This does not help the image of the law as a rational and logical institution.

Maritime law is analagous to the common law. This court shapes and defines it in a similar fashion to the work done by state tribunals. *Cf. Kermarec* v. *Compagnie Generale Transatlantique,* 358 U.S. 625, 79 S.Ct. 406 (1959); *Cox* v. *Roth,* 348 U.S. 207, 75 S.Ct. 242 (1955). In the *Cox* case, *supra,* Mr. Justice Clark, at page 210 referred to a discussion of death statutes by Dean Roscoe Pound in 13 NACCA L.J. 188-189 (May 1954).

> "The *Cox* case, *supra,* while it involved the Jones Act, is significant because of the reference to the comment by Dean Pound on the case of *Graham* v. *Lusi,* 206 F.2d 223 (5 Cir. 1953). This case held

that the Florida Death by Wrongful Act Statute, as interpreted by the Florida Supreme Court, was not broad enough to cover an action based on unseaworthiness. Dean Pound apparently felt that it was time for the entire concept that wrongful death is non-remediable in a common-law or maritime action to be overhauled to meet current conditions. Among other things, Dean Pound stated at page 189:

> "* * * Lord Campbell's Act is now well over a century old and has been adopted in every common-law jurisdiction. To think of recovery for wrongful causing of death as something exceptional not to be treated as part of the general law but to be provided for specifically as to application to every item of recent legislative improvement of the law is an anachronism. Today we should be thinking of the death statutes as part of the general law. * * *"

The court can meet the problem before it in a consistent, logical way which will not involve a violent departure from the existing law. The sequence of the argument is:

1. The duties for the safety of persons imposed by maritime law exist regardless of whehter the violation of such duty results in injury or death.
2. The maritime law has developed a full and consistent body of law defining duties and defenses to actions based on violations of such duties.
3. Only where there is a void, i.e., the absence of a well defined duty or defense in maritime law will the maritime law borrow or adopt another rule from another body of law.

4. In the case of wrongful death neither the common law nor the maritime law has a non-statutory rule defining who may take or the measure of damages flowing from death.

5. It is only on this element that a void exists.

6. Therefore, in enforcing a state wrongful death action, it will be only as to these elements, and only to the extent they are compatable with the affirmative rules of maritime law, that admiralty will "adopt" state statutes.

In the absence of a federal statute, this would promote consistency, recognize the uniformity of duties imposed under maritime law, and minimize the vagarities which presently result.

CONCLUSION

The best solution would involve a full maritime wrongful death law whether written by Congress, or fashioned by the court. Short of this, a refinement of the "adopting" doctrine of maritime law as discussed above will greatly improve the present state of the law.

Respectfully submitted,

NATHAN BAKER, ESQ.
1 Newark Street,
Hoboken, New Jersey, 07030

Certificate of Service

I HEREBY CERTIFY that copies of this motion and brief have been furnished by mail to John W. Boult, Esquire, of Fowler, White, Collins, Gillen, Humkey & Treman, Post Office Box 1438, Tampa, Florida 33601, Attorneys for Appellee, States Marine Lines, Inc., and to David C.G. Kerr, Esquire, of Macfarlane, Ferguson, Allison, Kelly & Himes, Post Office Box 1531, Tampa, Florida, 33601, Attorneys for Appellee, Gulf Florida Terminal Company, and C.J. Hardee, Jr., Esquire of Hardee, Ott & Hamilton, 101 East Kennedy Boulevard, Tampa, Florida, 33602 Attorneys for Appellant.

Said service was made on December 30, 1969.

NATHAN BAKER